



State of New Hampshire
RIVERS MANAGEMENT ADVISORY COMMITTEE
29 Hazen Drive, P.O. Box 95
Concord, NH 03302



June 13, 2006

The Honorable David Currier, Chair
SB 83 Study Commission
Legislative Office Building • Room 305
Concord, NH 03301

RE: Priority shoreland protection challenges for consideration

Dear Chairman Currier:

The Rivers Management Advisory Committee (RMAC) is submitting for consideration its prioritized list of Comprehensive Shoreland Protection Act (CSPA) challenges, and to express its strong support for any action taken by the SB83 Study Commission (Commission) to strengthen protection for the state's designated rivers.

The RMAC is a legislatively created body charged to work with the NH Department of Environmental Services (DES) on the administration of RSA 483, the Rivers Management and Protection Act. The RMAC is comprised of appointed members from the business, agriculture, hydroelectric, municipal government, water supply, conservation, recreation, fish and game and historical interests.

Since the CSPA was enacted, the RMAC has discussed the merits and shortcomings of the CSPA relative to rivers in the Rivers Management and Protection Act. Enclosed are the RMAC's prioritized challenges, supported by rational and/or explanation statements, with one more suggested recommendation(s) for the Commission's consideration.

Maintaining and enhancing the provisions of the Rivers Management and Protection Act and the CSPA benefits the many interests that depend on our state's rivers for safe and reliable water supplies and to support the many other uses along the river including agricultural irrigation, wildlife management, recreation, and fishing and hunting.

Thank you for the opportunity to comment to this significant study commission. Please don't hesitate to call me at (603) 466-2721 x199 should you have any questions.

Sincerely,

Kenneth D. Kimball, Ph.D., Chairman
Rivers Management Advisory Committee

Enclosure (1)

cc: Michael Nolin, Commissioner, DES
Alice Chamberlin, Special Assistant for Policy, Governor's Office
Harry Stewart, Director, Water Division, DES (*via electronic mail*)
Steve Couture, Rivers Coordinator, DES (*via electronic mail*)
RMAC Members (*via electronic mail*)
LRMAC Chairs (*via electronic mail*)
Jim Haney, Ph.D., Chair, LMAC (*via electronic mail*)
Carl Paulsen, Program Director, NH Rivers Council (*via electronic mail*)

RIVERS MANAGEMENT ADVISORY COMMITTEE

Comprehensive Shoreland Protection Act: Challenges and Recommendations

Since the Comprehensive Shoreland Protection Act (CSPA) was enacted, the Rivers Management Advisory Committee (RMAC) has discussed the merits and shortcomings of the CSPA relative to rivers in the Rivers Management and Protection Act (RMPA). Listed below are the RMAC's prioritized challenges, supported by rational and/or explanation statements, with one more suggested recommendation(s) for the Commission's consideration.

MINIMUM STANDARDS

1. **Challenge: Some designated rivers lack adequate protection.**

The designation under RSA 483 (RMPA) of certain state rivers signifies their importance as state and local resources. Section 483-B: 20 circumvents the intent of this important part of the Act: rivers designated into RSA 483 New Hampshire Rivers Management and Protection Program prior to January 1, 1993 are exempt from the provisions of the CSPA. The Pemigewasset and Saco Rivers are not currently protected under the CSPA. Moreover, some designated reaches of other rivers are not covered by the CSPA, as they are less than 4th order. Under the current CSPA provisions, even when the Pemigewasset and Saco Rivers are brought into the CSPA, certain reaches of them will be exempt from the CSPA.

Recommendations

- All rivers designated into RSA 483 should receive the same level of protection under the CSPA regardless of stream order. Amend RSA 483-B: 4 XVI to include "(d) All rivers designated for protection listed in RSA 483:15".
- The CSPA should apply to all designated rivers by repealing 483-B: 20.

2. **Challenge: Stream Ordering methodology is not commonly accepted.**

The commonly accepted and most accurate application of the Strahler methodology includes perennial and intermittent streams. The CSPA uses a modified approach, which only includes perennial streams. This modified approach reduces the comparability and accuracy of the ordering system. In other words, one 4th order stream could have significantly different characteristics compared to another 4th order stream determined with the current CSPA Strahler method. UNH, DES, and others are developing a National Hydrography Database that will reorder the streams on the Strahler methodology that includes all streams, intermittent and perennial.

Recommendations

- Amend RSA 483-B:4 XVI (c) to read:

Rivers, meaning ***all determined from the National Hydrography Database*** ~~year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 1/2" topographic maps.~~ Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of first order and higher shall be prepared and maintained by the ***Department*** ~~office of energy and planning and delivered to the commissioner~~ 30 days after the effective date of this act.

3. **Challenge: Minimum standards relevant to rivers and streams are weak.**

The purpose of RSA 483-B, CSPA, is to protect the valuable and fragile shorelands of the state in order to maintain the integrity of public waters. The CSPA is not meeting that purpose because rivers and streams that are less than 4th order are not subject to the provisions of the Act. Rivers and streams of 3rd order and lower must be protected as well in order to maintain the integrity of the downstream surface waters, regardless of whether it is a 4th order stream or a great pond. Increased protection for 4th order streams is also needed due to their non-static, dynamic nature.

Recommendations

- Establish a 75-foot no-disturb buffer for all second order or higher streams.
- Establish a 50-foot no-disturb buffer for all perennial 1st order streams.

4. **Challenge: Minimum removal of trees is confusing.**

Basal area is confusing to calculate for residential property owners. Residential ownership often changes, when this occurs it is difficult to determine the percentage of samplings that have been removed in the past 20 years.

Recommendation

- Establish a 75 and 50 foot no cut zone statewide, except for a six foot wide unpaved winding path leading to the shore for each property.

5. **Challenge: Water quality provisions are weak.**

Most scientific studies, including a recent NH study, indicate that watersheds with greater than 10% impervious cover are more likely to have degraded water quality and habitat.

Recommendation

- Establish a 10% maximum impervious cover on each lot.

PERMITTING/ENFORCEMENT

6. **Challenge: Lack of enforcement and funding**

DES has only one staff person to enforce the provisions of the CSPA.

Recommendation

- Enact a permit process similar to the wetlands permitting process. Charge the applicant a reasonable fee. A minimal portion of the fee would go to the town the remainder would go to DES. The money would be used to fund an additional DES staff person to review all applications that fall within the provisions of the CSPA. The Town would then send forward the submitted application to the local Conservation Commission for review and comment, and DES would notify the appropriate Local River Management Advisory Committee.

EDUCATION

7. **Challenge: Lack of education and funding**

DES has only one staff person to conduct education and outreach for the CSPA. This is a necessary component that will only increase in importance as changes to the CSPA are implanted.

Recommendation

- Earmark some of the money from the permitting process to fund an additional DES staff person to perform education and outreach relative to the provisions of the CSPA.